

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ROBERT L. BREUDER,)	
)	
Plaintiff,)	No. 1:15 cv 9323
v.)	Hon. Andrea R. Wood
)	
BOARD OF TRUSTEES OF)	
COMMUNITY COLLEGE DISTRICT NO.)	
502, DUPAGE COUNTY, ILLINOIS, an)	
Illinois body politic and corporate,)	
KATHY HAMILTON in her official and)	
individual capacity, DEANNE)	
MAZZOCHI in her official and individual)	
capacity, FRANK NAPOLITANO in his)	
official and individual capacity, and)	
CHARLES BERNSTEIN in his official and)	
individual capacity,)	
)	
Defendants.)	

INDIVIDUAL DEFENDANTS' MOTION TO DISMISS

Plaintiff was terminated from his position as President of the College of DuPage on October 20, 2015. The next day, he filed suit against COD's Board of Trustees and several individual members of the Board. The individual defendants (Kathy Hamilton, Deanne Mazzochi, Frank Napolitano, and Charles Bernstein) respectfully move under Fed. R. Civ. P. 12(b)(6) to dismiss the claims against them: Counts I and II (Due Process, Property and Liberty), Count III (Conspiracy), Count V (Tortious Interference with Contract), and Count VI (Defamation).

In support of their motion to dismiss, the individual defendants submit herewith their supporting memorandum, and also join the separate Board of Trustees' motion to dismiss and supporting memorandum, filed on January 7, 2016. As fully discussed in these memoranda, the claims asserted in Counts I, II, III, V, and VI fail to state claims on which relief may be granted:

- Claims against the individual defendants in their “official capacity” are equivalent to claims against the Board, and should be dismissed as redundant.

- Count I fails to state a claim for deprivation of property without due process because no property interest arises either from the employment agreement at issue (which was void *ab initio*) or from Board policies.

- Count II fails to state a claim that the defendants deprived Plaintiff of occupational liberty by stigmatizing him, because such a claim depends on a valid defamation claim, and the alleged defamatory statements against Plaintiff, a public figure, are protected by the First Amendment and other privileges and immunities.

- Counts I and II also fail to state due process claims because all the process that was due was available to Plaintiff, who refused it.

- Count III fails to state a claim for civil conspiracy because civil conspiracy is not an independent actionable wrong; there can be no conspiracy to breach a void contract; and under the intra-corporate conspiracy doctrine representatives of a single entity cannot conspire with each other.

- Count V fails to state a claim for tortious interference with contract because the contract is void; one cannot tortiously interfere with one’s own contract; the conduct at issue is protected by the First Amendment; and absolute privilege and the Tort Immunity Act apply.

- Count VI fails to state a claim for defamation because of the First Amendment, absolute privilege, qualified privilege, and the Tort Immunity Act, and at least part of the claim is time-barred.

Accordingly, the individual defendants respectfully request that all the claims against them be dismissed.

Dated: January 11, 2016

Respectfully submitted,

Defendants Frank Napolitano, Charles Bernstein,
Deanne Mazzochi, and Kathy Hamilton

/s/ Andrew C. Porter

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CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2016, I caused copies of the foregoing INDIVIDUAL DEFENDANTS' MOTION TO DISMISS to be served on all counsel of record by filing electronic copies with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered CM/ECF users.

/s/ Kaitlin G. Klamann